IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BARRY H. EDELMAN AND LINDA V. EDELMAN, TRUSTEES OF THE BARRY H. AND LINDA V. EDELMAN TRUST OF 2004, Appellants, vs. MONTEREY AT LAS VEGAS COUNTRY CLUB HOMEOWNERS' ASSOCIATION, Respondent.	No. 83494-COA
BARRY H. EDELMAN AND LINDA V. EDELMAN, TRUSTEES OF THE BARRY H. AND LINDA V. EDELMAN TRUST OF 2004, Appellants, vs. MONTEREY AT LAS VEGAS COUNTRY CLUB HOMEOWNERS' ASSOCIATION, Respondent.	No. 83714-COA

ORDER OF AFFIRMANCE

Barry H. Edelman and Linda V. Edelman, Trustees of the Barry H. and Linda V. Edelman Trust of 2004 (Trust), appeal from a district court order granting summary judgment in favor of Monterey at Las Vegas Country Club Homeowners' Association (HOA) and a subsequent order awarding the HOA attorney fees. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

The HOA is a nonprofit corporation that oversees condominium units, each of which is governed under a Declaration of Covenants,

Conditions, and Restrictions (CC&Rs).[1] The Trust is an owner of one of the condominium units, and Barry H. Edelman and Linda V. Edelman are trustees of the Trust. The Trust currently rents the unit it owns to the Edelmans.

The CC&Rs contain a rental limitation provision which restricts the total units that can be rented at any given time to "[n]o more than thirty percent (30%)." To keep better track of which owners and units have been approved as rentals, the HOA maintains two lists. One is a Leased Units List, which contains the approved units; the other is a waiting list, which contains the owners waiting for their units to be approved as rentals. Once a spot on the Leased Units List becomes available, the next owner on the waiting list is notified of its eligibility to rent their unit and is given 60 days to execute a lease.

In December 2015, the HOA communicated to the Edelmans that they were eligible to rent their unit. The Trust, as owner of the unit, was placed on the Leased Units List and subsequently executed a lease agreement with the Edelmans as individual lessees. Approximately three years later, the HOA's Board of Directors (Board) adopted a new rule that changed the procedure for calculating the 30 percent rental limit and changed what constituted a "rental unit" under the CC&Rs. The new rule stated that a unit "occupied by the owner of the units, or a shareholder, member, officer . . . trustor, or trustee of any business entity or trust that owns the unit" would not be deemed a "rental unit." Under the new rule, the HOA still allowed units owned by legal entities to continue renting to their trustees or themselves but merely ignored units owned by legal entities

[1]We do not recount the facts except as necessary to our disposition.

when calculating the 30 percent limitation. After instituting the new rule, the HOA notified the Trust that it had been removed from the Leased Units List. The HOA also informed the Trust that any future lease it desired to enter would require the Trust to reapply to be placed on the Leased Units List.

The Trust appealed the decision to the HOA's Board, challenging the retroactive application of the new rule. The Trust believed it was stripped of a vested right and that the Board failed to consult with unit owners before unilaterally amending the rule. The Trust was concerned that future beneficiaries, namely the Edelmans' children, would no longer be able to immediately rent the unit after the Edelmans passed away; the children would now have to seek approval from the HOA before renting the unit. Nevertheless, the Board upheld the decision to remove the Trust from the Leased Units List.

Following the Board's denial of the Trust's appeal, the Trust filed a complaint alleging the following causes of action: breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, declaratory relief, and attorney fees. During discovery, both parties filed competing motions for protective orders and motions to compel. The HOA sought to compel production of the governing Trust instrument while the Trust sought production of the Leased Units List. Ultimately, the discovery commissioner recommended that the Trust disclose the full trust instrument, though the Trust chose only to disclose 5 of the 17 pages of the trust document.

Both parties then filed competing motions for summary judgment. Following a hearing, the district court granted the HOA summary judgment and subsequently awarded it attorney fees as the prevailing party. The district court held that the Trust had not shown any

evidence that it suffered actual damages and could therefore not sue for breach of contract or breach of an implied covenant of good faith and fair dealing. Further as to the implied covenant, the court found no evidence showing the Board implemented the rule change for any reason other than to further the best interests of all owners. The district court similarly held that there was no breach of fiduciary duty because the Trust was allowed to continue renting to the Edelmans even after the rule change, and the rule change was only made pursuant to the Board's authority under the CC&Rs, giving it the discretion to set the terms of the 30-percent rental limit.

Additionally, the district court determined that the trust instrument required a subsequent trustee to liquidate the property and distribute the income and principal to all subsequent beneficiaries of the Trust over age 30 upon the passing of the Edelmans. Furthermore, any subsequent trustee would be required to hold any assets in a separate trust for any beneficiary under age 30 after the Edelmans passed away. The court held that this requirement under the trust instrument superseded any claim that the Trust had lost a vested right.

The Trustees appealed the district court's grant of summary judgment in favor of the HOA, raising the following issues: whether the district court (1) erred in finding that the Trust did not incur damages and therefore could not obtain declaratory relief; (2) incorrectly concluded that the Trust's cause of action for attorney fees could not qualify as special damages; (3) erred in finding that the Trust is not a protected class/party; (4) erred in not considering the full scope of the Trust's governing instrument

in its findings and conclusions; and (5) abused its discretion in awarding the HOA attorney fees.[2] We address each in turn.

We review an order granting summary judgment de novo. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). Summary judgment is appropriate when no genuine dispute of material fact exists and the moving party is entitled to judgment as a matter of law. *Id.* Here, both parties agree that no genuine dispute of material fact exists, so we focus our review only on questions of law.

The district court correctly determined that the Trust failed to prove it suffered damages, and thus could not obtain declaratory relief under NRS Chapter 116

The Trust contends that the district court misapplied NRS Chapter 116 in holding that the Trust could not obtain declaratory relief because it had not shown evidence that it suffered any actual damages. The

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[2]The Trust raised two additional arguments on appeal: whether the district court (1) failed to consider and apply NRS Chapter 30 and (2) failed to consider whether the HOA's retroactive application of the new rule was retaliatory under NRS 116.31183. However, the Trust did not raise either argument below, and we therefore need not consider them. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."); *9352 Cranesbill Tr. v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 82, 459 P.3d 227, 232 (2020) (declining to address an issue that the district court did not resolve). Further, even if the district court had considered whether declaratory relief was warranted under NRS Chapter 30, the Trust has not demonstrated result would have changed. The district court held that future beneficiaries of the Trust are prevented from renting the unit under the language of the trust agreement, so a declaratory judgment would not eliminate the prohibition against future beneficiaries' ability to rent; thus, any purported error by the district court for failure to consider NRS Chapter 30 is harmless error because such a judgment would not have been in favor of the Trust. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (stating an error is not prejudicial unless a different result might reasonably have been reached without the error).

HOA argues that the Trust's claim for declaratory relief is based only on prospects of future harm which are not sufficiently ripe for a court's determination. Additionally, the HOA highlights that the Trust suffered no actual damages because the HOA continued to allow the Trust to rent its unit to the Edelmans after the rule changed and because the trust instrument requires subsequent beneficiaries to liquidate.

The Trust claims that proof of damages is not required under NRS 116.4117(1) when read in conjunction with NRS 116.4117(2). The district court disagreed and found that NRS 116.4117(1)'s language requires a party seeking to enforce a violation of NRS Chapter 116 to have suffered "actual damages."[3] Further, the Trust failed to present proof that it had suffered any actual damages. Notably, during trial, counsel for the Trust admitted that the Trust's damages were that it was taken off the Leased Units List and future beneficiaries would not be able to immediately rent the unit without first requesting approval from the HOA. When asked to calculate the Trust's damages, counsel for the Trust responded, "[R]ight now, there are no damages." As the district court noted, the Trust's argument that it lost the right to rent the unit in the future is essentially immaterial given that the language of the trust instrument requires

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[3]NRS 116.4117(1) states:

> Subject to the requirements set forth in subsection 2, if a declarant, community manager or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons *suffering actual damages* from the failure to comply may bring a civil action for damages or other appropriate relief.

(Emphasis added.)

subsequent trustees to immediately liquidate the trust assets after the death of Mr. and Mrs. Edelman. We discern no error regarding the district court's findings that NRS 116.4117(1) requires proof of actual damages, that the Trust failed to present any evidence it had suffered actual damages, and any claim by the Trust that it was stripped of a vested right to rent in the future is immaterial given the restrictive language contained in the trust agreement.

The Trust next asserts that the district court's reading of NRS 116.4117(1) failed to consider the prefatory clause that appears at the start of the subsection.[4] Regardless, NRS 116.4117(2) still requires that a civil action or an action for other appropriate relief, such as for declaratory relief, be brought when there is a "failure or refusal to comply with any provision of" NRS Chapter 116. Thus, to obtain declaratory relief under NRS 116.4117(1), the Trust must establish that the HOA violated or refused to comply with a provision of NRS Chapter 116.

In seeking to establish a violation by the HOA under NRS Chapter 116, the Trust claims the HOA's rule change violated subsections 1 through 3 of NRS 116.335.[5] As to NRS 116.335(1) and NRS 116.335(2), the

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[4]The Trust focuses on the prefatory language in subsection 2 that allows for "a civil action for damages or other appropriate relief," arguing that "other appropriate relief" denotes that the Trust can bring forth a claim for declaratory relief without proof of damages.

[5]NRS 116.335(1) prevents an association from renting or leasing a unit unless the declaration prohibited the unit's owner from renting or leasing the unit at the time the owner purchased the unit. NRS 116.335(2) similarly prevents an association from requiring an owner to secure or obtain approval from the association to rent or lease a unit unless the declaration required approval from the association at the time the owner purchased the unit. Finally, NRS 116.335(3) prohibits amending a declaration to decrease the maximum number or percentage of units which may be rented or leased

Trust's arguments fail because the HOA implemented and enforced the 30 percent rental restriction since 2005, while the Edelmans purchased the unit and transferred it to the Trust in 2015. Since the rental restriction provision and the procedure of requesting approval to be placed on the Leased Units List was effective before the Trust took title to the unit, the HOA did not violate NRS 116.335(1) or NRS 116.335(2).

The Trust claims the HOA violated NRS 116.335(3) because of the material impact the Trust suffered when it was removed from the approved renters list and because it was removed after it held a vested right. Although the HOA did amend its CC&Rs when it instituted the rule change governing the calculation of the 30 percent, it never decreased the percentage of units that could be rented under the new rule—the limit was 30 percent before the rule change and stayed at 30 percent following the rule change. Since there was not a decrease in the maximum percentage of units that may be rented under the CC&Rs, the HOA did not violate NRS 116.335(3). Therefore, the Trust fails to establish a violation of NRS Chapter 116 and cannot obtain declaratory relief under NRS 116.4117(1).

The district court correctly concluded that the Trust could not assert a cause of action for attorney fees as special damages

The Trust argues that it asserted special damages in the form of attorney fees; however, the district court held that attorney fees as special damages could not satisfy the damages requirement under NRS 116.4117(1).

In support of its argument, the Trust cites to the Nevada Supreme Court's decision in *Sandy Valley Associates v. Sky Ranch Estates Owners Association*, 117 Nev. 948, 956, 35 P.3d 964, 969 (2001). However, the Trust misinterprets the court's decision and its subsequent modification

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when the declaration contains a provision establishing the maximum percentage of units which may be rented or leased.

in *Horgan v. Felton*, 123 Nev. 577, 170 P.3d 982 (2007). The Nevada Supreme Court stated in *Sandy Valley* that attorney fees are permissible as special damages when the damages are foreseeable as a result of the other party's tortious conduct or a breach of contract. *Sandy Valley*, 117 Nev. at 956, 35 P.3d at 969. However, the supreme court narrowed the applicability of *Sandy Valley*, stating that it "inadvertently expanded the scope of real property cases in which attorney fees are available as special damages." *Horgan*, 123 Nev. at 586, 170 P.3d at 988. In *Horgan*, the supreme court clarified that "attorney fees are only available as special damages in slander of title actions and not simply when a litigant seeks to remove a cloud upon title." *Id.* Therefore, although the Trust alleged tortious conduct by the HOA in its complaint, the cause of action for attorney fees cannot qualify as special damages because the Trust is not alleging a claim for slander of title.

The district court correctly concluded that a trust is not a protected class under Nevada law

The Trust argues that all trusts are a protected class under Nevada law. The Trust cites to Article 15, Section 16(C), of the Nevada Constitution, which states: "'Employer' means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts of employment." It also claims that the HOA treated the Trust as a protected class when it approved the Trust to rent its unit and placed the unit it owned on the Leased Units List. The HOA responds that the Trust has not offered any legal authority for its claim that a trust is a protected class and fails to state which protections it would be entitled to as a protected class. The HOA further argues that the Trust similarly fails to explain how the outcome below would have changed in any way had the district court decided a trust falls within a protected class.

A party is responsible to cogently argue, with the support of relevant authority, any of its claims on appeal. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). As mentioned above, the Trust only cites to a provision of the Nevada Constitution that defines an "employer" for purposes of payment of compensation to employees; thus, the Trust has not shown this provision is applicable to it in this case. Importantly, the Trust has not demonstrated how the district court's conclusion that "trusts and other legal fictions are not a protected class under the law" was wrong. Additionally, the Trust fails to indicate how its status as a protected class would change the district court's conclusions or what protections trusts would be entitled to as a protected class. *See Wyeth*, 126 Nev. at 465, 244 P.3d at 778 ("To establish that an error is prejudicial, the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached.").

Without proper legal authority to support this claim, this court will not extend any protections to trusts that have been afforded to traditional protected classes. Since the Trust does not offer any relevant legal authority establishing trusts as a protected class, nor does it show how its substantial rights were adversely affected, we affirm the district court's conclusions that trusts are not a protected class.

The Trust invited any error by not disclosing the full trust

The Trust argues that the district court improperly relied on selected pages of the Trust when it granted summary judgment in favor of the HOA and thus the district court's order should be reversed. The Trust also claims that it offered the full trust document to the district court for in

camera review, but the district court declined the offer. The HOA claims that the Trust refused to disclose the remaining pages of the trust during discovery, and it argues that the pages it did disclose were dispositive on the issue of the right to rent the unit after the Edelmans pass away.

This court will not allow the Trust to argue on appeal that the district court made incorrect assumptions and conclusions in relying on only five pages of the instrument when the Trust intentionally withheld the remaining pages throughout discovery. *See Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) (holding that a party cannot complain on appeal of errors which the party itself induced or provoked the court to commit). The district court relied on portions of the trust instrument rather than the full instrument because those pages were the only pages available to the court for review. After a lengthy and contentious dispute where competing motions to compel and motions for protective orders were filed, the discovery commissioner recommended granting the HOA's motion to compel disclosure of the full trust. Even then, the Trust still refused to disclose the full document, although the district court apparently never ruled on the motion.

The district court also addressed the Trust's argument that the court refused an in camera review. The district court explained that this argument was flawed because the court's review of the evidence was limited to the evidence in the record during the motion for summary judgment stage. By the time the district court had a hearing on the parties' competing motions for summary judgment, the district court stated discovery was closed; the record does not indicate the Trust sought to extend or reopen it. During the hearing on the parties' competing motions for summary judgment, counsel for the HOA moved to withdraw the HOA's motion to compel, seemingly ending the dispute and focusing the district court's

attention to only the evidence within the record. Therefore, the Trust could no longer seek to make arguments based on the supposed support of undisclosed pages.

Thus, because of invited error, and because the Trust did not disclose any pages of its governing trust instrument that contradict or change the district court's interpretation. Moreover, the Trust fails to explain how a review of the full trust agreement would change the result below by the district court; therefore, we will not reverse based on Trust's argument that the district court should have relied on the full trust agreement. *See also Wyeth*, 126 Nev. at 465, 244 P.3d at 778 (stating an error is not prejudicial unless a different result might reasonably have been reached without the error).

The district court did not abuse its discretion in awarding attorney fees to the HOA

The Trust lastly argues that the district court erred in awarding the HOA attorney fees because the Trust could not review the HOA's billing ledgers. The Trust claims that without access to these monthly invoices, it was not able to meaningfully dispute the reasonableness of the amount of attorney fees awarded to the HOA. On the other hand, the HOA claims the Trust waived any argument against the district court's award of attorney fees because the Trust failed to oppose the motion to seal, and therefore, missed its opportunity to be allowed review of the HOA's billing ledgers.[6]

So long as the district court's calculation of attorney fees placed a reasonable value on the services performed by the attorney, this court will not disturb the district court's award absent an abuse of discretion. *See*

[6]The district court's Order Granting the HOA's Motion to Seal also states that "no opposition" was filed. Arguments not raised below are deemed waived. *See Old Aztec Mine*, 97 Nev. at 52, 623 P.2d at 983.

Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 350, 455 P.2d 31, 33-34 (1969).

In its motion for attorney fees and costs, the HOA included a chart with a monthly breakdown of charges it incurred but also filed an accompanying exhibit under seal. The sealed document contained monthly invoices that included confidential information. In awarding and calculating the fees amount awarded, the district court reviewed the *Brunzell* factors, along with the information filed publicly and the bills filed under seal and reduced the amount sought by over $20,000. Thus, we cannot conclude the district court abused its discretion in awarding the HOA attorney fees under NRS 116.4117(6) as the prevailing party.

Moreover, the Trust does not claim that the district court incorrectly applied the *Brunzell* factors. The Trust also fails to assert how being granted access to the HOA's exhibit filed under seal would have changed the district court's calculation and award of attorney fees to the HOA. *See Wyeth*, 126 Nev. at 465, 244 P.3d at 778. Therefore, under the totality of the circumstances, we find no reversible error.

Accordingly we,

ORDER the judgment of the district court AFFIRMED.[7]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

[7]Insofar as the parties have raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. David M. Jones, District Judge
Eleissa C. Lavelle, Settlement Judge
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